

(1971) 02 MP CK 0012
In the Madhya Pradesh High Court
Case No : F.A. No. 19 of 1968

State of M.P., Bhopal

APPELLANT

Vs

Bhagwant Rao

RESPONDENT

Date of Decision : 25-02-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 311, 311(2)

Citation : (1975) ILR (MP) 672 : (1971) JLJ 534 : (1971) MPLJ 515

Hon'ble Judges : G.P. Singh, J; A.P. Sen, J

Bench : Division Bench

Advocate : M.V. Tanaskar, Deputy Govt, for the Appellant; Y.S. Dharmadhikari, for the Respondent

Final Decision : Allowed

Judgement

A.P. Sen, J.

The First Additional District Judge, Bhopal has declared that the Government Order No. 6540/4344/XIX dated 25-10-1960 removing the Respondent-Plaintiff from his post as Executive Engineer in the Public Works Department was illegal, unjust and ineffective. He has further granted to him a decree for Rs. 31,350 towards the arrears of salary from the date of removal upto the date of suit, and has further directed that he will be entitled to the amount of salary which he would have earned if he had not been removed from service from the date of suit till the date of attaining the age of superannuation.

After a preliminary enquiry held by the Chief Engineer, the State Government of the erstwhile Madhya Bharat State ordered a departmental enquiry into the conduct of the Plaintiff. By charge-sheet dated 16-5-1956, Ex. P-5, he was charged with having made over-payments during the month of July 1953 of Rs. 7,189 to Keshoram contractor and of Rs. 7,026 to Bhan-warlal contractor, in respect of rolling of earth work of Malhargarh-Narayan-garh Road. By another charge-sheet of even date, Ex. P-10, he was charged with having made an over-

payment of Rs. 31,674 to contractor Bhawani Singh Bhanwarlal during the period April to July 1953, in respect of rolling of earth work of Neemuch-Chhoti Sadri Road. Both the contracts were under his charge while the Plaintiff was the Executive Engineer, Mandsaur, P. W. D. and Irrigation Dvn. and the over-payments were made by him while he was under orders of transfer.

By the charge-sheets, the Government constituted Shri K. L. Handa, Superintending Engineer, P. W. D. and Irrigation, Circle No. 3, Indore as the Enquiry Officer. Along with both the charge-sheets, the Plaintiff was supplied with the statement of allegations in respect of each. He was also asked therein-

- (a) to state whether he desired to be heard in person ;
- (b) to furnish the names and addresses of the witnesses, if any, whom he wished to call in support of his defence; and
- (c) to furnish a list of documents, if any, which he wished to produce in support of his defence.

He was further informed that if he wished to see any relevant records of the Government for the purpose of preparing his defence, he should furnish a list of such records to the Enquiry Officer so that arrangements would be made to provide facilities for showing him such records. The statements of allegations particularised the documents upon which the charges were framed. While replying to the charges, the Plaintiff did not express any desire to avail himself of any of the facilities offered. Nor did he ask for an oral enquiry but while he was at Indore in connection with the enquiry of Gopalpur tank in the Commissioner's office, he saw the Enquiry Officer on 7-7-1956 and expressed a desire that he should be heard in person. The points raised and discussed at the hearing were put in form of a Questionnaire and clarifications in writing were obtained from the Plaintiff.

The fact of over-payments was never disputed and the Plaintiff only pleaded certain facts in mitigation. At the conclusion of the enquiry, the Enquiry Officer by his findings in Enquiry Reports, dated 16-7-1956 held that all the charges in respect of Malhargarh-Narayangarh Road, and also charges Nos. 1, 2, 3, 5 and 6 in respect of Neemuch-Chhoti Sadri Road against the Plaintiff have been proved and proposed that he should be reduced in rank by way of punishment. After a consideration of the replies furnished by the Plaintiff to the charges framed and the Enquiry Officer's reports thereon, the Government arrived at a provisional decision that having regard to the gravity of the charges which had been proved, the Plaintiff should be removed from service. He was, therefore, called upon to show cause why the proposed punishment should not be inflicted on him. The Plaintiff showed cause against the action proposed to be taken. After a consideration of the representation made by him, the Government found that the Plaintiff was guilty of all the charges in case of Malhargarh-Marayangarh Road and charges Nos. 1, 2, 3, 5 and 6 in respect of Neemuch-Chhoti Sadri Road and ordered that he shall be removed from service with immediate effect, vide,

Government order No. 6540/4344/XIX dated 25-10-1960.

Against the order of removal, the Plaintiff submitted a memorial to the Governor claiming that he be reinstated in service and be paid all his arrears of salary and other allowances. The Government having considered the memorial withheld it under the proviso to Rule 26 of the Madhya Bharat Civil Services (Classification Control and Appeal) Rules, 1956 by their order No. 1731 /286/XIX/E-62 dated 27-3-1962. The memorial was withheld on the ground that it did not contain any material evidence which was not previously taken into consideration. Thereupon, the Plaintiff by his notice dated 22-10-1963 intimated his intention to file a suit but did not specify the relief which he would seek. By the notice, he formulated the grounds on which he challenged the order of removal. On 30-12-1963, he commenced the present suit claiming a relief of declaration and Rs. 31,350 as arrears of salary. The First Additional District Judge, Bhopal has upheld his contention that the order of removal was in violation of Article 311(2) of the Constitution and hence granted the reliefs sought.

On behalf of the Appellant State, two contentions have been raised. The first is that the notice dated 22-10-1963, Ex. P-20, was not in conformity with Section 80 of the Code of Civil Procedure, as it did not set out the reliefs sought and even if it were construed as involving a relief of declaration, the Plaintiff's suit for recovery of arrears of salary was not maintainable. The second contention is that the Plaintiff never asked for an oral enquiry under Rule 15 (4) of the Madhya Bharat Civil Services (Classification, Control and Appeal) Rules, 1956 and, therefore, taking of oral evidence was not obligatory on the Enquiry Officer. Nor was the department bound to lead any oral evidence to substantiate the charges framed against the Plaintiff as its case entirely depended on documents. Under the 2nd part of Rule 15 (4), the Plaintiff was entitled only to a personal hearing. Admittedly, such a hearing was given to him. Not only that, the points raised and discussed were put in the form of a questionnaire in each case and clarifications in writing were obtained from him. The requirements of Article 311(2) of the Constitution were, therefore, fully complied with.

Strictly speaking, a notice u/s 80 of the CPC must fulfil the three-fold requirements of the section: It must State (1) the name, description and place of residence of the Plaintiff, (2) the cause of action for the suit, and (3) the relief which he claims. The section is explicit and mandatory and admits of no implications or exceptions. Though the terms of the section have to be strictly complied with, it does not mean that the notice should be scrutinised in a pedantic manner divorced from common sense [See, AIR 1927 176 (Privy Council) and *Dhian Singh Sobha Singh and Another Vs. The Union of India (UOI)*, In *Dhian Singh v. Union of India* (supra)], the Supreme Court stated:-

We are constrained to observe that the approach of the High Court to this question was not well founded. The Privy Council no doubt laid down in *Bhagchand Dagadusa v. Secretary of State* (supra), that the terms of this section should be strictly complied with. That does not however mean that the terms of

the notice should be scrutinised in a pedantic manner or in a manner completely divorced from common sense. As was stated by Pollock C. B. in *Jones v. Nicholls*, (1844) 13 M & W 361 (363) : 153 E R 149, at p. 150 (G), "We must import a little common sense into notices of this kind." Beaumont, C.J , also observed in *Chandulal Vadilal Vs. Government of The Province of Bombay*,

One must construe Section 80 with some regard to common sense and to the object with which it appears to have been passed.....

Keeping in mind these principles, we are of the view that the notice, Ex. P 20, substantially meets the requirement of Section 80 of the Code of Civil Procedure. It sets out the facts leading to the order of removal, complians that reasonable opportunity to show cause as envisaged in Article 311(2) of the Constitution was not afforded, and then states:

That Patil is now left with no other alternative than to file a regular civil suit in the District and Session Judge's Court, Bhopal or any other competent Court having jurisdiction to entertain such a suit on the following amongst other grounds:

It further mentions that he had filed an appeal in the form of a memorial which dealt extensively with the prejudicial manner in which the enquiry was conducted. Then follows the ground on which the order of removal was assailed. Lastly, the notice states:-

That a copy of memorial submitted by Patil and which was withheld by the Department is being enclosed herewith. This memorial exhaustively deals the case in its every aspect. It is therefore submitted that this memorial be treated as a part of this Notice, as to incorporate all the grounds in this notice would make it very lengthy.

There can be no doubt that the cause of action was definitely stated, and the only difficulty lay in the reliefs claimed. The Plaintiff certainly did not say that he claimed a declaration or arrears of salary, but there can be no doubt whatever as to the nature of the reliefs which he intended to claim. The relief of declaration was clearly implicit and if the memorial was read as part of the notice then there can also be no doubt that he was claiming the relief for payment of arrears of salary on reinstatement.

In *Secretary of State for India v. Nagorao* A I R 1938 Nag. 415 : I L R 1939 Nag. 206, it was not specifically stated in the notice u/s 80 as to what relief the intending Plaintiff claimed against the Government. The only thing which was said in the concluding portion of the notice was-

I strongly protest against the order of the forest officer (Ranger's No. 1172 956, dated the 5th July (1928) and request you to order free passage to the cattle by these public roads or to take notice that if such order is not made within two months of the receipt of this letter by you, I shall take such legal steps to obtain the required redress of my grievance as I may be advised.

It was argued that the notice did not state the cause of action nor the relief claimed. While negating that contention, Grille J. observed as follows:-

There can be no doubt that the cause of action is definitely stated, and the only difficulty lies in the relief claimed. The Plaintiff certainly does not say that he claims a declaration of his right or an injunction; but, as both the Courts below have held, there can be no doubt whatever as to the nature of the relief which he would claim in the Civil action which he gave notice he would bring.

On a reading of the notice in that case, his Lordship observed that it was possible to spell out as to what relief the intending Plaintiff wanted to claim. So also, in *Pandurang Kashinath More Vs. Union of India*, *Tendolkar and Desai JJ.*, in somewhat similar circumstances where a civil servant brought a suit against the Government for wrongful dismissal claiming arrears of salary on reinstatement, but had failed to claim such relief in the notice, stated as follows:-

If the notice u/s 80 of the Code does not definitely state the relief claimed but the allegations in the notice leave no doubt whatever as to the nature of the suit under contemplation, the object in giving the notice is served and the requirements of law in respect of the notice should be considered as satisfied.

...the principal demand of the Plaintiff was that the termination of his employment was in violation of the constitutional safe-guards and he had continued to remain in the employment of the Defendant. Now we are giving a declaration that the Plaintiff is in service till judgment and the right to salary in such a case,... incidentally arises from that declaration. We do not think it would be fair or just to the Plaintiff to deny him in this suit his salary which he becomes entitled to receive only incidentally upon the declaration we are giving in his favour.

Following these authorities, we are of the view that the suit, so far as it relates to arrears of salary, cannot fail for want of a valid notice as contended.

That brings us to the next question, whether the removal of the Plaintiff was in violation of Article 311(2) of the Constitution. The law is well settled that once the opportunity to show cause is given, the constitutional requirement is satisfied. If, at the enquiry stage, the officer is given an opportunity to adduce evidence and cross-examine witnesses but he then does not avail himself of that, he cannot, at a later stage, complain that there was no compliance with Article 311(2). The holding of an oral enquiry was not mandatory under Rule 15 (4) of the Madhya Bharat Civil Services (Classification, Control and Appeal) Rules, 1956. The relevant provisions of Rule 15 read as follows:-

15(3) If the person charged does not desire to have an oral enquiry or to be heard in person then the appointing authority shall arrive at a provisional conclusion in regard to the penalty to be imposed. The person charged shall thereafter be asked to show cause, within a reasonable time not exceeding two weeks, against the particular penalty proposed to be inflicted and he shall also be

informed of any other circumstances which it proposed to take into consideration in passing orders on the case. His explanation, if any, shall be duly considered in consultation with the Commission, where such consultation is prescribed, before final orders are passed.

(4) If he so desires or if the authority concerned so directs, an oral inquiry shall be held, such inquiry may be entrusted to an inquiry authority. At this inquiry only the parties concerned be present and no counsel shall be allowed to be engaged. For such of the charges as are not admitted oral evidence shall be heard and the person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called, as he may wish, provided that the inquiry authority may, for special and sufficient reason to be recorded in writing refuse to call a witness. If no oral inquiry is held and if the person charged has desired to be heard in person, a personal hearing shall be given to him. The proceedings of the inquiry shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof.

(6) After the inquiry has been completed the competent authority shall arrive at a provisional conclusion in regard to the penalty to be imposed. The person charged shall thereafter be supplied with a copy of report of the inquiry authority.

Provided that, where the punishment proposed is higher than that which may be recommended by the inquiry authority or where the appointing authority disagree with any of the findings of the inquiry authority the point of disagreement together with a brief statement of the grounds thereof, shall also be communicated to the person charged. He shall then be called upon to show cause within a reasonable time not exceeding three weeks, against the proposed penalty. He shall also be informed of any other circumstances which it proposed to take into consideration in passing orders on the case. The explanation, if any, shall be duly considered in consultation with the commission, where such consultation is prescribed, before passing final orders.

Explanation:-Any action taken under this rule shall be without prejudice to the provisions of the Public Servants Enquiries Act, 1850.

Clause (2) of Article 311 protects a Government servant against being dismissed or removed or reduced in rank without being afforded a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. Rule 15, which is based on Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, prescribes special procedural protection, in the interest of Government servants, as regards these major punishments. The true scope and effect of Article 311(2) of the Constitution was considered by the Supreme Court in *Khem Chand Vs. The Union of India (UOI)* and Others, The "reasonable opportunity" envisaged by Article 311(2), in the words of Das C. J., includes:-

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based ;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

(c) an opportunity to make his representations as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant.

It is on the facts quite clear that these requirements have been complied with in the present case.

The holding of an "oral enquiry" under Rule 15 (4) is only necessary when the delinquent "so desires" or if the authority concerned "so directs". In *State of Bombay (Now Maharashtra) Vs. Narul Latif Khan*, , the Supreme Court interpreting Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, stated as follows:-

This clause lays down that if he, that is to say the charge-sheeted Officer, so desires or if the authority concerned so directs, an oral enquiry shall be held. In our opinion, it is plain that the requirement that an oral enquiry shall be held if the authority concerned so directs, or if the charge-sheeted officer so desires is mandatory. Indeed, this requirement is plainly based upon consideration of natural justice and fairplay. If the charge-sheeted officer wants to lead his own evidence in support of his plea, it is obviously essential that he should be given an opportunity to lead such evidence.

Their Lordships clearly rejected the contention that the holding of an oral enquiry was obligatory, in the following passage:-

We will assume for the purpose of this appeal that in a given case, Government would be justified in placing its case against the charge-sheeted officer only on documents and may be under no obligation to examine any witnesses, though we may incidentally observe that even in such cases, if the officer desires that the persons whose reports or orders are being relied upon against him should be offered for cross-examination, it may have to be considered whether such an opportunity ought not to be given to the officer; but that aspect of the matter we will not consider in the present appeal.

Speaking on behalf of the Division Bench, one of us (Singh J.) stated in *K. Dhruva Rao Vs. Madhya Pradesh Electricity Board, Jabalpur*, as follows:-

The question then is whether oral inquiry was essential according to Rule 55. The rule has been construed by the Supreme Court in *Nurul Khan's* case, where it is observed: This Clause (clause dealing with enquiry in Rule 55) lays down that if he, that is to say, the charge-sheeted officer, so desires or if the authority concerned so directs an oral enquiry shall be held. In our opinion it is plain that

the requirement that an oral inquiry shall be held if the authority concerned so directs or if the charge-sheeted officer so desires is mandatory. (Nurul Khan's case)

Oral inquiry according to Rule 55 is necessary when it is either desired by the charge-sheeted officer or directed by the authority concerned. Further, oral inquiry may also be necessary where the charge is such which in itself requires oral evidence for its proof.

We see no reason to take a different view in the present case. See also, Union of India (UOI) Vs. Hari Om,

From these authorities, it follows that the holding of an oral enquiry is necessary under Rule 15 (4) if he, that is to say, the charge-sheeted officer so desires or if the authority concerned so directs. In the present case, the Plaintiff was particularly asked to state whether he desires to be heard in person, which means an "oral enquiry" but he never signified such desire. Nor did the State Government while instituting the departmental enquiry direct that an oral enquiry shall be held. The expression "authority concerned" in Rule 15 (4) must, in the context, mean the appointing authority. Furthermore, the charges were also not such which required evidence to be taken. We have been taken minutely into the charges framed and we think that they did not require oral evidence for their proof. The State Government rested its case on the documents. Having regard to the facts of this case, none of the conditions of the first part of Rule 15 (4) existed. Along with the charge sheets, the Plaintiff was furnished with statements of allegations which mentioned the documents on which the charges were based. It, therefore, cannot be said that the departmental enquiry held against the Plaintiff was violative of Article 311(2) of the Constitution.

The contention that when the punishing authority appoints an Enquiry Officer under Rule 15 (4) then such appointment is tantamount to giving a direction that an oral enquiry shall be held cannot be accepted. Rule 15 (4) cannot be interpreted in isolation, but must be read in the context of Rule 15 (3). If the person charged does not desire to have an oral enquiry or to be heard in person then the appointing authority has, in terms of Rule 15 (3), to arrive at a provisional conclusion in regard to the penalty to be imposed. But the adoption of such a course would be in violation of Article 311(2) and, therefore, despite the language of Rule 15 (3), it must still hold an enquiry into the charges framed before reaching a provisional conclusion as regards the guilt of the delinquent officer. It may for that purpose entrust the enquiry to a subordinate officer in terms of Rule 15 (4). But such entrustment cannot, by itself, be treated as a direction to hold an oral enquiry.

The next contention that by the withholding of certain documents, the Plaintiff was deprived of a reasonable opportunity of showing cause, with-in the meaning of Article 311(2), is equally untenable. The documents on which the charges were framed were specified in the statements of allegations and the Plaintiff was

duly informed that he was at liberty to inspect the relevant records. When he was served with a show cause notice, at the conclusion of the departmental enquiry, the Plaintiff wanted that copies of certain documents be furnished to him or at any rate he should be allowed to inspect the document, Ex. D-11. The Government stated that at the second stage i. e., of showing cause against the proposed punishment, there was no question of complying with that request, Ex. D-12. However, later the Government relented and furnished the Plaintiff with copies of some of the documents and stated that the remaining would be supplied subsequently, Ex. D-24. As regards the remaining documents, the Government later permitted the Plaintiff to inspect, Ex. D-37. However, instead of availing himself of this facility, the Plaintiff asked for copies of certain other documents, which were not mentioned in the list, Ex. D-38. We are of the view that the requirements of Article 311(2) had been substantially complied with and there was no denial of opportunity by the withholding of documents.

The further contention that the requirements of the proviso to Rule 15 (5) have not been complied with cannot be accepted. Here, the State Government entirely agreed with the findings of the Enquiry Officer and based its proposal as to the punishment upon that report. This was not a case where it had disagreed with the finding of the Enquiry Officer. There was, therefore, no question of the Plaintiff being furnished with the "points of disagreement together with the brief statement of the grounds therefor". While accepting the findings on all the charges in respect of Malhargarh-Narayangarh Road and on charges Nos. 1, 2, 3, 5 and 6 in respect of Neemuch-Chhoti Sadri Road, the State Government reached a provisional conclusion that the charges were proved. However, in view of the seriousness of the charges, the Government provisionally proposed the punishment of removal from service. The Plaintiff was served with a show cause notice against the action proposed to be taken against him. The findings of the Enquiry Officer together with his reasons had been communicated.

It was then urged that the Enquiry Officer, Shri K. L. Handa, Superintending Engineer, P. W. D. and Irrigation, Circle No. 3, Indore, was actuated by bias because he had been instrumental in prescribing the New Schedule of Rates and, therefore, had pre-judged the whole issue. No such objection was ever raised during the enquiry that Shri Handa on account of his personal knowledge should not hold the enquiry. However, in reply to show cause notice, this ground was put forward for the first time. We are of the view that the objection was wholly frivolous. There is nothing on record to suggest that Shri Handa was actuated with any ill-will or bore any grudge or had any motive in involving the Plaintiff. On the other hand, he was extremely fair and pointed out in the enquiry report that there were no charges of dishonesty against the Plaintiff and, therefore, he should only be reduced in rank. The State Government, however, did not agree with such lenient view in the matter of punishment. The mere fact that Shri Handa had knowledge about the working of the department did not, ipso facto, debar him from being the Enquiry Officer.

Lastly, it was contended that under Rule 26 of the Madhya Bharat Civil Services (Classification, Control and Appeal) Rules, the memorial submitted by the Plaintiff should not have been withheld from the Governor. There is no merit in the contention. The rule reads as follows:-

Memorial to the Rajpramukh. (1) A member against whom orders have been passed by Government, as the original or appellate authority, imposing any of the major penalties, may submit a memorial to the Rajpramukh within three months from the date of receipt of the orders:

Provided that no such memorial shall lie except on the ground that some material evidence has not been taken into consideration which has resulted in miscarriage of justice.

The withholding of the memorial was in terms of the proviso. The proviso is in the nature of an exception to the main enacting provision. The right to file a memorial is in the nature of review. Such right can be exercised when some material evidence has not been taken into consideration which results in miscarriage of justice. That requirement was not fulfilled in the instant case. The memorial, therefore, did not lie under Rule 26 and the State Government was within its powers in withholding the same.

In the result, the appeal succeeds and is allowed. The judgment and decree passed by the learned Additional District Judge are set aside and the Plaintiff's suit is dismissed with costs throughout. Counsel's fee as per schedule.